

Hearing Date and Time: October 24, 2011 at 10:00 a.m.

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_____)	
In re:)	Chapter 11
)	
DELPHI CORPORATION, <i>et al.</i> ,)	Case No. 05-44481 [RDD]
)	(Jointly Administered)
Debtors.)	
_____)	

**SUPPLEMENT OF F.A. TECH CORPORATION TO OMNIBUS REPLY OF CERTAIN
DEFENDANTS TO REORGANIZED DEBTORS' OMNIBUS RESPONSE TO CERTAIN
DEFENDANTS' SUBMISSIONS REGARDING THE OCTOBER 2, 2009
SUPPLEMENTAL POSTCONFIRMATION EXTENSION OF AVOIDANCE ACTION
SERVICE DEADLINE MOTION**

F.A. Tech Corporation ("F.A. Tech"), the defendant in adversary proceeding no. 07-02350, files this Supplement to the Omnibus Reply of Certain Defendants to Reorganized Debtors' Omnibus Response to Certain Defendants' Submissions Regarding the October 2, 2009 Supplemental Postconfirmation Extension of Avoidance Action Service Deadline Motion [Doc. No. 21624] in regards the Debtors' suggestion that F.A. Tech waived any defenses under Fed. R. Civ. P. 4(m) because they were allegedly not raised in F.A. Tech's answer.

In its answer, F.A. Tech challenged the efficacy of service. It asserted, *inter alia*, affirmative defenses that the preference action was barred by estoppel and the statute of limitations under § 546(a). Specifically, the Answer included the affirmative defense that

To the extent that the Plaintiffs' claims set forth in the Complaint are barred by the applicable statute of limitations including, but not limited to, Section 546 of the Bankruptcy Code, the Complaint should be dismissed with prejudice.

Answer [Adv. Proc. Doc. No. 11] at 6.

Additionally, the Answer specifically retained the right to amend the answer and assert additional defenses. The Reorganized Debtors' first Complaint has been dismissed by this Court's order on September 7, 2010. Thus, all of these defenses have been preserved. The Court has yet to decide whether to grant the Reorganized Debtors' leave to file an amended complaint. In September 7, 2010 order, the Court held: "All other arguments raised by defendants in the Adversary Proceedings that were not ruled upon at the Hearing or pursuant to this Order, and all responses thereto, are preserved." (Dismissal Order, ¶ 5).

Further, F.A Tech joined in the Motions to Dismiss filed by other similarly situated creditors, including those filed prior to F.A. Tech's answer, which included seeking dismissal related to the four extension motions. *See*, Joinder of F.A. Tech Corporation to Motions (I) to Vacate Prior Orders Establishing Procedures for Certain Adversary Proceedings, Including Those Commenced by the Debtors Under 11 U.S.C. §§ 541, 544, 545, 547, 548, or 549, and Extending the Time to Serve Process for Such Adversary Proceedings, (II) Dismissing the Adversary Proceeding with Prejudice, or (III) in the Alternative, Dismissing The Adversary Proceeding on the ground Of Judicial Estoppel [Doc. No. 20101 and Adv. Proc. Doc. No. 26]. The Debtors' never challenged the timeliness of the assertion of these defenses in any of the previous pleadings.

Thus, F.A. Tech adequately preserved its right to challenge the efficacy of service of the Preference Action. For all of the foregoing reasons, F.A. Tech respectfully requests that the Court exercise its discretion to deny Debtors' Motion for Leave so that complaints against F.A. Tech remains dismissed and grant F.A. Tech such other and further relief as this Court may deem appropriate.

Date: October 7, 2011
Cincinnati, Ohio

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